The remaining question that requires consideration is whether by virtue of the adoption deed the applicant now has a joint interest for the enjoyment of the properties in Malaysia held in the name of the deceased. The reasons I had set out earlier should in equal force apply. The applicant was not the deceased's adopted son at the time of the deceased's death. As the deceased was the absolute owner of the properties both in India and in Malaysia at the time of his death and was entitled to dispose of such properties in his will, there is no ground to warrant a finding that the ownership of the properties so disposed had not absolutely passed. In my view the widow inherited the properties disposed of by will absolutely as from the time of the death of the testator. Support for my finding may be found in another passage in *Raghavachariar* at page 1048 where it is stated that

"Under the Hindu Succession Act a woman who inherits her husband's estate or who has acquired property in any other way... becomes an absolute owner of the property, and if she subsequently makes an adoption the adopted son does not get any right in that property. The fact that the property was originally the ancestral property in the hands of her husband does not enable the adopted son to get an interest in that property."

For purposes of the present case further support may be found in one other passage in *Raghavachariar* at page 1045 under the sub-head "No divestment on adoption." It is revealed that under section 12 of the Hindu Adoptions and Maintenance Act, 1956 which seems to apply to the present case, "the adopted child shall not divest any person of any estate which vested in him or her before the adoption." It is also revealed, further down in that passage, that —

"... this section makes a significant change with reference to the effect of an adoption and says in the opening paragraph itself that the adopted child shall be deemed to be the child of his or her adoptive father or mother for all purposes with effect from the date of the adoption. Therefore, the adoption cannot affect or divest the property, though originally belonging to the adoptive father who died possessed of the same, if before the adoption the property had become vested in somebody else...."

As regards the validity of the adoption deed, I accept the argument put forward by Mr. Shankar that as the deed purported to apply not only to Malaysian immovables but to all properties belonging to the widow therefore the deed ought to be registered as it was a non-testamentary instrument purporting to create present and future rights of immovable properties. The validity of such document must, I agree, be determined by Indian law under which it took place.

Finally, I would deal with the applicant's contention that the adoption by the law of the adoptive parents' domicile should be treated as a valid adoption in other countries for the purpose of the immovable properties in other countries. I have taken into consideration the following cases cited by Mr. Palasuntharam — *C.S. Nataraja Pillai (now deceased) & Anor.* v. *C.S. Subbaraya Chettiar*[13] and *In re Valentine's Settlement — Valentine & Ors.* v. *Valentine & Ors.*[14]

I am conscious of the fact that the applicant's adoption was permitted by and was concluded according to the custom of the Nattukottai Chettiar caste but what remains to be considered is the law that governs his right. For reasons that I stated earlier, it is my finding that the applicant had neither immediate right under section 12(c) of the Hindu Adoptions and Maintenance Act, 1956 nor retrospective rights.

The effect of adoption as provided under section 12 of the Hindu Adoptions and Maintenance Act is that the adopted child shall be deemed to be the child of his or her adoptive father or mother with effect from the date of the adoption. It is well provided under the proviso to this section that "the adopted child shall not divest any person of any estate which vested in him or her before the adoption." To conclude may I finally say that the properties disposed of by the deceased in the will were the properties which the deceased enjoyed absolute ownership and on the death of the deceased the properties so disposed whether they are in India or Malaysia had vested the widow and daughter absolutely. I am therefore unable to find favour with the applicant's claim. Whether the applicant will or will not have any right or interest in the widow's properties after the death of the widow is not for this court to consider at this point.

In the circumstances of this case it is my considered judgment that the application for revocation must necessarily fail and I therefore dismiss the application with costs.

As for Originating Motion No. 47/1973 I am satisfied, indeed I have found that the purported original will is the original will and I allow the application and order that it be admitted to probate with costs.

Consequently, in the light of my findings in this case, I allow Ramanathan Chettiar's application and grant the order as prayed for in the summons-in-chambers dated September 9, 1971 with costs.

Order accordingly.

Solicitors: *V.K. Palasuntharam; Shearn, Delamore & Co.*

THE M.V. "YAMATO MARU"; M. V. "YAMATO MARU" OWNERS v. S.P.I.E. SRI SURIA SDN. BHD.

[O.C.J. (Arulanandom J.) May 10, 1976]

[Penang Admiralty *in Rem* No. 5 of 1976]

Shipping — Admiralty suit in rem — Ship chartered under bareboat charter party to charterers — Claim against charterers for goods supplied and services rendered — Owners terminating Bareboat Charter — Whether action in rem can be brought against vessel — Courts of Judicature Act, 1964, s. 24(b).

In this case the plaintiffs (respondents) had brought an action against the owners and all persons interested in the "Yamato Maru" for goods supplied and services rendered at the ports of Singapore and Malaysia. On the vessel's arrival at Penang it was arrested but the owners (applicants) made payment into court and the vessel was released. The ship had been chartered to the charterers, Sino Yamato Shipping Pte. Ltd. on a bareboat charter party. The owners had terminated the charter soon after the release of the ship

from seizure. The owners (applicants) then applied to court to set aside the writ of summons and all subsequent proceedings and for the release of the vessel and for damages.

Held: (1) in this case there was no charter by demise nor was there any evidence to show that the charterers beneficially owned the vessel. This was a mere bareboat charter party agreement and therefore it could not be held that the ship was beneficially owned by the charterers;

(2) in view of the terms of the bareboat charter party agreement it could not be held, unless the owners bound themselves specifically with the agents, that they would be liable for the claim the plaintiffs have against the charterers;

(3) the writ and all subsequent proceedings should therefore be set aside.

Cases referred to:-

(1) *Syed Omar Alsagoff & 2 Ors.* v. *V.E.R.M. Somasundram Chitty* (1909) 11 S.S.L.R. 38.

(2) *The St. Merriel* [1963] 1 All E.R. 537.

(3) *The Andrea Ursula* [1973] 1 Q.B. 265.

ADMIRALTY *IN REM.*

V. Thevendran for the appellants.

H.L. Tennakoon for the respondents.

Arulanandom J.: This is an application by a Notice of Motion by the defendants for an order as follows: —

1. That the Writ of Summons herein dated the 21st day of January, 1976, the service thereof and all subsequent proceedings be set aside on the grounds appearing in the Affidavit of Toshio Kagaya affirmed on the 26th day of February, 1976 and filed herein;
2. That the vessel "Yamato Maru" be released forthwith and that the plaintiffs do pay to the defendants damages to be assessed by the Senior Assistant Registrar of this Honourable Court or such other appropriate person that this Honourable Court may appoint;
3. That the plaintiffs be condemned in the costs of this action and of this application to be taxed;
4. Such further or other relief as to this Honourable Court may seem just or proper.

The history of this case is briefly as follows. The ship "Yamato Maru" of which the applicants are owners was chartered to the charterers, Sino Yamato Shipping Pte., Ltd., for a period of four years. The Bareboat Charter Party is dated March 29, 1975 but the charter was not to commence before April 5 if required by the charterers. The Bareboat Charter Party Exhibit TK1 is annexed to the affidavit of Toshio Kagaya who is the president of Yamato Enterprise Co., Ltd., the registered owners of the vessel. The affidavit is dated February 26, 1976.

When the ship was in Penang Harbour the ship was arrested by one United Malayan Shipping Co. (in Adm. Suit No. 2/76). The owners made payment into court and the ship was released. Immediately after its release the owners by virtue of clause 31 of the Bareboat Charter which reads as follows: —

"31. If at any time after the delivery of the said vessel to the Charterer hereunder, the Charterer shall fail to perform any of its duties or obligations, or shall violate any of the prohibitions imposed upon it under this Charter, or if the Charterer shall be dissolved or be adjudged a bankrupt, or shall have a petition in bankruptcy filed against it, or shall make a general assignment for the benefit of creditors, or if a receiver or receivers shall be appointed for the Charterer, the Owner may, without prejudice to any other rights which it may have under this Charter, withdraw and retake the said vessel, wherever the same may be found, whether upon the high seas or in any port, harbour, or other place and without prior demand and without legal process, and for that purpose may enter upon any dock, pier, or other premises where the vessel may be and may take possession thereof."

decided to terminate the charter. Accordingly, on the 13th day of February, 1976, they sent a notice of action to the charterers giving them notice of termination. This notice of termination is Exhibit TK2 annexed to the same affidavit. Applicant's solicitor concedes that there is an error in the description in describing Mr. Toshio Kagaya San as the owner in this notice of termination while in fact he was the president of the company which owned the vessel. To my mind this does not invalidate the notice of termination. A copy of this was extended to Messrs. Darshan Singh & Co., 18A Beach Street, Penang, the plaintiffs' solicitors, who were then according to the applicants' affidavit, and still are, acting for the charterers. The letter addressed to the charterers was returned to the applicants with the endorsement "closed" "gone away."

On February 27, 1976, a letter was received by the Senior Assistant Registrar, High Court, Penang, from Mr. Darshan Singh forwarding a Change of Solicitors and Undertaking by Solicitors for Bailiff's expenses. The letter also stated that Messrs. Darshan Singh had received the Notice of Motion sent to them by the applicants and that they had forwarded the notice and the affidavit to the present plaintiffs' solicitors, Messrs. Tennakoon, Selva & Co. of Johor Baru. In addition to issuing the notice of termination the applicants published a notice in the *Straits Times Press* on February 17, 1976. The notice which is Exhibit TK4 of the applicants' affidavit reads as follows: —

"NOTICE

This is to notify that SINO YAMATO SHIPPING (PTE) LTD., of Room 455, 4th Floor, People's Park Centre, Singapore 1, is no longer the Bare Boat Charterer of the vessel Yamato Maru. The said Company has with immediate effect no right whatsoever to enter into any contract of carriage or to canvass for the same or to transact any business regarding the said vessel.

YAMATO ENTERPRISES CO. LTD.
4-4-6, Chome Ginza Chuo-Ku,
Tokyo, Japan."

On February 21, 1976, the plaintiffs commenced their action against the owners and all parties interested in the ship. The claim of the plaintiffs, according to the indorsement, was that they claimed as agents against the said vessel Yamato Maru for goods supplied and services rendered, port and other charges and due in respect of its maintenance between September 26, 1975 and December 30, 1975 at the Ports of Singapore and East and West Malaysia valued at M$45,348.22.

The applicants seek to set aside this writ and all subsequent proceedings on the grounds that the Bareboat Charter Party Agreement has been terminated to the knowledge of the plaintiffs and that therefore there was no cause of action against the applicants.

From the history of the case it cannot be doubted that the then plaintiffs' solicitors were fully aware of the termination of the Bareboat Charter Party Agreement by reason of the letter extended to the then

plaintiffs' solicitors and by reason of the notice in the *Straits Times.*

It has been held in the case of *Syed Omar Alsagoff & 2 Ors.* v. *V.E.R.M. Somasundrum Chitty*[1] that notice to a solicitor is notice to the party. Again, by the laws of evidence, a publication of notice in the press is notice to the parties. The applicants' contention is that since the notice of termination was given in compliance with the Bareboat Charter given in clause 31, charterers had no more interest in the vessel. When the ship was arrested by the plaintiffs possession was with the owners. The applicants also contended that if there was a cause of action against the owners, which was not admitted, the cause of action had not yet commenced in these proceedings. Their reasons for saying that was that no statement of account of the claim of the plaintiffs has been sent to them. The plaintiffs, on the other hand, contend that Mr. Darshan Singh was not acting for the plaintiffs and therefore the plaintiffs had no knowledge of the termination. Considering the history of the case, it is difficult to accept this proposition. Mr. Darshan Singh has received a copy of the notice of termination sent on 13th day of February. He was then acting for the charterers. On February 21 he filed the writ on behalf of the plaintiffs. He accepted service of this Notice of Motion together with all the exhibits which was filed on February 26, 1976. It was only on February 27, after receiving this Notice of Motion, that he transferred the case to the present solicitors. This court is satisfied that the plaintiffs were aware of the termination of the Bareboat Charter Party Agreement by the applicants as against the charterers. The plaintiffs, on the other hand, are not seriously relying on the Bareboat Charter Party Agreement, which again satisfies me that they were aware of the termination. Their claim against the applicants is founded on a joint-venture agreement dated May 4, 1975, between the charterers and the owners for the purpose of carrying out the shipping business by the steamship "s.s. Yamato Maru." A copy of the joint-venture agreement is exhibited to the affidavit of Sulaiman bin Hassan, chairman of the plaintiff company, sworn to on March 3, 1976. This agreement is not signed by the owners qua owners but purely as parties and it seeks to provide for sharing of profits in the operation of the shipping business.

Article 3 of that agreement reads as follows: —

"Article 3, Formation of the joint venture

Both Party A and Party B shall each appoint one director and other than directors, shall appoint one executive officer, who shall manage the daily business of the joint venture, upon consultation between Party A and Party B, who will serve for the joint venture required for operation of s/s Yamato Maru. Regarding the implementation of the detailed rules of account which will be determined separately, shall be carried out by directors who will be appointed by Party A and Party B and no representative shall be appointed. Provided, however, in an extraordinary case, a proxy may be appointed upon the consultation between Party A and Party B but such proxy is only authorised to perform the business within the limit of power granted in the power of attorney issued respectively by Party A and Party B. However, any other acts of the proxy outside the limit of power granted shall be void and null."

It will be seen by this article that in the carrying out of a joint-venture business either party would appoint one director and one executive officer who shall manage the daily business of the joint-venture upon consultation between the parties. It further goes on to say that no representative shall be appointed, provided however, in an extraordinary case, a proxy may be appointed upon the consultation between Party A and Party B, but such proxy is only authorised to perform the business within the limits of power granted in the power of attorney issued respectively by Party A and Party B. In interpreting this article it is clear that one party cannot appoint an agent whose appointment will be binding on the other party.

According to the plaintiffs' own affidavit their letter of appointment as agents is from the charterers, namely, Sino Yamato Shipping Pte. Ltd. Whatever other defects there may be in this letter of appointment, one thing is apparent from the face of it: that it purely binds the charterers, Sino Yamato Shipping Pte., Ltd. The plaintiffs contend that the termination of the Bareboat Charter by the applicants does not affect the plaintiffs' claim as it had already accrued on such termination. This would be correct if the applicants were bound in any other way by the appointment of the plaintiffs as agents, but from the interpretation of the joint-venture agreement it does not appear to be so. The letter of appointment, as I said earlier, is signed purely by the charterers. The applicants are not made party to it nor was it signed with their authority. And here, applicants deny that they had given any authority for the appointment of the plaintiffs as agents. For Admiralty Actions our courts are governed by section 24(b) of the *Courts of Judicature Act* which reads as follows: —

"24. Without prejudice to the generality of section 23 the civil jurisdiction of the High Court shall include —

(b) the same jurisdiction and authority in relation to matters of admiralty as is had by the High Court of Justice in England under the United Kingdom Administration of Justice Act, 1956;"

Under the Administration of Justice Act, 1956, section 3(4) reads as follows.—

"3. (4) In the case of any such claim as is mentioned in paragraphs (d) to (r) of sub-section (1) of section one of this Act, being a claim arising in connection with a ship, where the person who would be liable on the claim in an action in personam was, when the cause of action arose, the owner or charterer of, or in possession or in control of, the ship, the Admiralty jurisdiction of the High Court... may be invoked by an action *in rem* against — (a) that ship if at the time when the action is brought it is beneficially owned as respects all the shares therein by that person; or (b) any other ship which, at the time when the action is brought, is beneficially owned as aforesaid."

It is true that in this case if an action *in personam* could be brought against the owners, then this action *in rem* would lie against the owners. The plaintiffs in this case argue that because of the joint-venture agreement and because of the fact that the applicants have not taken over control of the ship they will be liable. The owners in this case had already stepped into the picture and made payment into court to get the ship released when it was arrested in Admiralty Action No. 2 of 1976. Immediately after that they terminated the Bareboat Charter Party Agreement and entered conditional appearance to this writ. It can hardly be said in the circumstances that the owners had not taken any steps in this matter to regain control and possession. It is true also that the joint-

venture agreement had not been terminated but, as I said before, the mere existence of the joint-venture agreement does not make the applicants liable *in personam* to an action by the plaintiffs. In the case of *The St. Merriel*[2] an action *in rem* was brought against the registered owners of the ship for repairs to the ship, etc. The owners applied for the writ to be set aside on the grounds that the ship had been chartered by demise and no action *in personam* could have been brought against them and hence the plaintiff had sued the wrong person and no action against the vessel *in rem* lay. Hewson J. allowed the application and set aside the writ. The facts in that case as found by the learned judge were that the vessel at all material times was chartered by demise, that there was no contract with the defendants for carrying out the repairs and that all arrangements concerning repairs had been conducted between the charterers' agents and the plaintiff. There was no evidence of the charterers owning any or all of the shares in the ship. In concluding his judgment after considering various points Hewson J. said on page 544:

"It seems to me that the purpose of section 3(4) of the Administration of Justice Act, 1956, is, amongst other things, to identify the person or persons whose ships may be arrested, and that such identification is a question of fact. I have had sufficient facts on affidavit in this case to reach a firm decision on that matter, and I ask myself on those facts, first, who would be liable in this case if the action as constituted succeeded. It would be the person who, when the cause of action arose — be he the owner or the charterer or the person who is in possession or in control of the ship — made the contract for the repair by the plaintiffs; and on the evidence, as I say, I am satisfied that there was no contract, express or implied, between the owners and the repairers. I am satisfied that there was no liability on the owners when the cause of action arose. I am further satisfied on the second point which it is necessary to decide on this subsection that, when the action was brought, this ship was beneficially owned, as respects all the shares therein, by the owners, the defendants. If the Administration of Justice Act, 1956 (21) had said 'beneficially owned' and stopped there, counsel for the defendants admitted that it might have been arguable that it might have embraced the charterers by demise. 'Beneficially owned' is not defined in the Act of 1956; and there are circumstances where a ship is owned by one person — that is, true ownership — where that person is the only person with a right to sell and yet where the same ship is beneficially possessed, or beneficially controlled, by some other person, such as in this case, where the ship is under charter by demise. But the words of the Act of 1956 (22) are 'as respects all the shares therein', and I conclude that the words are there for some purpose and that that purpose is to indicate the true owner, that is, the only person with a right to sell all the shares. So that, under this section also I find that, when the action was brought, the defendants were the persons who beneficially owned the ship as respects all the shares therein."

The case of *The St. Merriel, supra*, and particularly Justice Hewson's interpretation of section 3(4) of the Administration of Justice Act, 1956 were considered in the *Andrea Ursula*[3] and his interpretation of "beneficial owner" to mean the "beneficial owner of all the shares" was rejected. Justice Brandon in differing from Justice Hewson on the definition of "beneficially owned" stated at page 147 (l.h.c. last para.):

"There is no definition in the Act of the expression 'beneficially owned' as used in section 3(4). It could mean owned by someone who, whether he is the legal owner or not, is in any case the equitable owner. That would cover both the case of a ship the legal and equitable title to which are in one person, A, and also the case of a ship the legal title to which is in one person A, but the equitable title to which is in another person B. In the first case the ship would be beneficially owned by A, and in the second case by B. Trusts of ships, express or implied, are however, rare, and the words seem to me to be capable also of a different and more practical meaning related not to title, legal or equitable, but to lawful possession and control with the use and benefit which are derived from them. If that meaning were right, a ship would be beneficially owned by a person who, whether he was the legal or equitable owner or not, lawfully had full possession and control of her, and, by virtue of such possession and control, had all the benefit and use of her which a legal or equitable owner would ordinarily have.

A ship which is demise chartered is an example of a ship which is possessed and controlled by a person not the legal or equitable owner in the way that I have described."

After giving various reasons supported by leading cases and authorities for his varying from Justice Hewson's definition and laying down the proposition that an action *in rem* would lie against the vessel if an action *in personam* could be brought against the person who lawfully had full possession and control of her and had all the benefit and use of her, Justice Brandon concluded on page 150 (ibid):

"For the reasons which I have given I am of opinion that the Andrea Ursula was, at the date when this action was brought, beneficially owned as respects all the shares therein by Anglo-Med within the meaning of section 3(4) of the 1956 Act. I have already found that the plaintiffs' claim arises in connection with the Andrea Ursula and that Anglo-Med, being the persons liable on the claim in an action in personam were, when the cause of action arose, the charterers of the Andrea Ursula.

It follows that all the requirements of section 3(4) are fulfilled and the court has jurisdiction to entertain proceedings *in rem* against the Andrea Ursula in respect of the claim and to give the plaintiffs all such relief as is appropriate to such proceedings."

In this case there was no charter by demise by the plaintiffs nor was there evidence to show that they beneficially owned the vessel even accepting Justice Brandon's definition that all the shares need not be owned by the charterers. This is a mere bareboat charter party agreement and therefore it cannot be held that the ship was beneficially owned by the charterers. Furthermore, the Bareboat Charter Party Agreement in clause 5 states as follows: —

"5. The Charterer shall, at its own expense, man, operate, victual, fuel, and supply the vessel, the Master and Chief Engineer, however, to be subject to the approval of the Owner, and the Owner shall have the right to require the removal of the Master or Chief Engineer if it shall have reason to be dissatisfied. So far as reasonably practicable, the crew to be employed by the Charterers shall be American citizens, Japanese or Indonesians."

Clause 13 reads as follows: —

"13. Neither the Charterer nor the Master of the vessel shall have any right, power, or authority to create, incur, or permit to be imposed upon the vessel any liens whatsoever except for crew's wages and salvage. The Charterer agrees to carry a properly certified copy of this Charter Party with the ship's papers, and on demand to exhibit the same to any person having business with the vessel which might give rise to any lien thereon, other than liens for crew's wages and salvage. The Charterer agrees to notify any person furnishing repairs, supplies, towage, or other necessaries to the vessel that neither the Charterer nor the Master has any right to create, incur, or permit to be imposed upon the vessel any liens whatsoever except for crew's wages and salvage. Such notice, as far as may be practicable, shall be in writing. The Charterer further agrees to fasten to the vessel in a conspicuous place and to maintain during the life of this Charter, a notice reading as follows:

'This vessel is the property of YAMATO ENTERPRISES CO., LTD., TOKYO. It is under Charter to SINO YAMATO SHIPPING PTE. LTD. and by the terms of the Charter

neither the Charterer nor the Master has any right, power, or authority to create, incur, or permit to be imposed upon the vessel any liens whatsoever except for crew's wages and salvage.'"

In view of these two clauses in the Bareboat Charter Party Agreement it cannot be held that, unless the owners bound themselves specifically with the agents, they would be liable for the claim the plaintiffs have against the charterers. For the reasons stated above, the application in the Notice of Motion above will be allowed, the writ struck out and all subsequent proceedings set aside. The Senior Assistant Registrar is ordered to assess the damages suffered by the applicants and that the plaintiffs pay to the applicants the damages assessed. Costs to be paid by the plaintiffs.

Order accordingly.

Solicitors: *Allen & Gledhill; Tennakoon, Selva & Co.*

YEW LEAN FINANCE DEVELOPMENT (M) SDN. BHD. v. DIRECTOR OF LANDS & MINES, PENANG

[O.C.J. (Arulanandom J.) May 17, 1976]

[Penang — Civil Suit No. 249 of 1974]

Land Law — Acquisition of land for residential, industrial and public purpose — Whether null and void — Land Acquisition Act, 1960, ss. 3, 7, 8, 9 & 37.

The plaintiffs purchased Lots 530(1) and 530(2), Mukim 14, Province Wellesley North in August 1972 with the intention of developing the said lands as a housing complex. The lands were allegedly charged to one Annamalai for a certain sum. On November 1, 1972 the plaintiffs' architect submitted a plan for such a housing complex to the Majlis Daerah Utara, Butterworth but on February 20, 1973 the Council's architect rejected the plan on the grounds that the said lands were being acquired under Penang *Gazette* Notification 23 of 1973. The said notification stated that the lands were being acquired for residential, industrial and public purpose.

The plaintiffs contended, *inter alia*, that the lands were being acquired for some vague purpose and therefore the notice of intended acquisition was null and void and that as a result of the wrongful acquisition the plaintiffs suffered damage.

The main issue before the court was whether the notice stating that the land was being acquired for residential, industrial and public purposes was null and void because it was vague and did not particularize the specific purpose.

Held, dismissing the suit: (1) the government was the sole authority to decide what is, or, what is not, a public purpose, and the decision by the Government in this respect could not be questioned by a civil court;

(2) it would not be possible or practical to specify the exact purpose of any particular lot. If the land was acquired for a public purpose the plaintiffs had no choice but to surrender the land to the Government, and it was immaterial to them for what purpose the land was used, as long as it was for a public purpose;

(3) there was no need for the State authority to confine its acquisition of land to purposes which came under one head only, i.e. either under section 3(a), 3(b) or 3(c). They may use either head individually or may combine one or two of them as the case may be.

Cases referred to:-

(1) *Secretary of State for India in Council* v. *Akbar Ali* (1923) I.L.R. 14 Allahabad 443.

(2) *Brett* v. *Brett* (1826) 3 Addams 210, 216.

(3) *R.* v. *Oakes* [1959] 2 All E.R. 92.

(4) *Green & Anor.* v. *Wood & Anor.* (1845) 14 L.J.Q.B. 217.

(5) *Syed Omar bin Abdul Rahman Taha Alsagoff & Anor.* v. *Government of the State of Johore* [1975] 2 M.L.J. 241.

CIVIL SUIT.

Lim Kean Chye for the plaintiffs.

Mohamed Noor bin Hj. Ahmad (State Legal Adviser) for the defendants.

Arulanandom J.: This is a suit brought by the plaintiffs, Yew Lean Finance Development (M) Sendirian Berhad, against the Director of Lands and Mines, Penang, seeking the following orders: —

(1) A declaration that the said GN 23 is null and void as it fails to specify for what purpose the plaintiffs said lands are being acquired.

(2) Alternatively that the subsequent failure of the State Authority to particularise the purpose of acquisition further rendered the said notification inoperative.

(3) A further declaration that the said GN 23 is published in a form which is *ultra vires* sections 7, 8 & 9 of the Land Acquisition Act and therefore void.

(4) A declaration that the purported acquisition is of no effect because it was based on a misreading of GN 35.

(5) A declaration that the purported acquisition is of no effect because the wrong motive was applied in acquiring the lands *which* are not needed for the Prai Barrage project *or are* required for some vague purpose.

(6) A declaration that the said GN 23 is void and of no effect as it was signed by a person who is not a designated person.

(7) Damages resulting from the publication of the said GN 23 and subsequent actions of the authorities concerned and further delays consequential thereto.

(8) Costs.

The brief facts of the case are as follows. The plaintiffs were the proprietors of Lot 530(1) and Lot 530(2) Mukim 14, Province Wellesley North, hereinafter called the said lands which they purchased in about August 1972 with the intention of developing the said lands as a housing complex. The lands were allegedly charged to one S.N.A.S.A. Annamalai Chettiar for $250,000 with interest at 12% per annum. On November 1, 1972 the plaintiffs' architect submitted a plan for such a housing complex to the Majlis Daerah Utara, Butterworth but on February 20, 1973 the Council's architect rejected the plan on the grounds that the said lands were being acquired under Penang *Gazette* Notification 23 of 1973 published on the 1st of February 1973. The said Notification G.N. 23 of 1973 stated that the lands were being acquired for residential, industrial and public purpose. Subsequently the land was acquired and this suit is the result of that acquisition.

The plaintiffs' complaint about the whole acquisition was that they wrote in March 1974 to the State Secretary Penang enquiring for what particular purpose the plaintiffs' said lands were being acquired and that they received no reply. Further they said G.N. 23/73 was not signed by a designated person under the Land Acquisition Act and that the lands were being acquired for some vague purpose and